

TODD N. HALLOCK (7061)  
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IN THE FIRST JUDICIAL DISTRICT COURT  
COUNTY OF RICH, STATE OF UTAH

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FRANK E. WESTON & SONS, CO.,	*	COMPLAINT FOR DECLARATORY
	*	JUDGMENT
Plaintiff,	*	
	*	
v.	*	
	*	
PAUL W. LAMBORN,	*	Civil No.
TRUSTEE OF THE PAUL W.	*	Judge:
LAMBORN REVOCABLE TRUST ,	*	
LAMBORN RANCHES, L.L.C., a Utah	*	
Limited Liability Company, and ROBERT	*	
L. MORGAN, STATE ENGINEER,	*	
	*	
Defendants.	*	

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COMES NOW the Plaintiff, above named and for Complaint against the above named Defendants allege as follows:

1. Plaintiff, Frank E. Weston & Sons, Co., now is, and at all times mentioned was, a partnership with its principal place of business in the County of Rich, State of Utah.
2. Upon information and belief, Defendants, Paul W. Lamborn, Trustee of the Paul W. Lamborn Revocable Trust and Lamborn Ranches, L.L.C. are the owners of certain real property and water rights appurtenant thereto in Rich County State of Utah.
3. The Defendant, Robert L. Morgan is the State Engineer who by statute and by the terms of the Decree and Order is to administer the Order and Decree at issue herein.

4. The real property and water rights at issue herein are located in Rich County, State of Utah.
5. The water rights at issue herein were adjudicated as part of that case captioned In the matter of the General Determination of the Rights to the Use of All the Water, Both Surface and Underground, Within the Drainage Area of the Bear River and All Its Tributaries in Utah First Judicial District Court, originally in Rich County, but transferred to Cache County in approximately 1958.
6. In that matter, it was ordered, adjudged, and decreed that the parties hereto and/or their predecessors in interest had certain water rights in and to certain tributaries of the Bear River to wit: North Creek, Little Cheney Spring Stream, Jebo Creek, Tuft Creek, and Judd Kimball Spring Stream. (See the "Red Book").
7. By subsequent conveyances for valuable consideration, the Plaintiff in the present action is and has become the successor in interest and owner of water and water rights in the above referenced tributaries.
8. Plaintiff uses such water and water right to irrigate its real property.
9. Plaintiff upon information and belief alleges that Defendants Lamborn and Lamborn Ranches, L.L.C. in the present action are the successors in interest and owners of certain water rights in the above-referenced tributaries.
10. The State Engineer's Office is statutorily and by that Interlocutory Order referenced below charged with administering and enforcing the water rights of the respective parties.
11. Pursuant to an Interlocutory Order dated 24 March 1958 the following Order was made:

ORDERED, ADJUDGED AND DECREED that North Creek, Little Cheney Spring Stream, Jebo Creek, Tuft Creek and Judd Kimball Spring Stream be and they are hereby, declared to be tributary streams to Meadowville Creek, and it is further

ORDERED, ADJUDGED AND DECREED that the priority of all of the above named water users for irrigation from said Meadowville Creek and its tributaries above named be, and they are hereby, declared to be equal and shall be set as of the year 1863, and it is further

ORDERED, ADJUDGED AND DECREED that all of the waters of Meadowville Creek and its tributaries for irrigation purposes shall be distributed to the owners and users thereof by and under the direction of the Utah State Engineer for the year 1958 in accordance with the attached priority schedule and due consideration shall be given and proper allowance made for the following factors:

a. When there is sufficient water to satisfy all rights, distribution shall be made as if there were three separate units, namely (1) North Creek and Little Cheney Spring Stream, (2) Jebo Creek, Tuft Creek and Judd Kimball Spring Stream, and Meadowville Creek above and including the Meadowville Ditch Diversion, (3) Meadowville Creek below the Meadowville Ditch diversion, and (4) those lands on Lower Meadowville Creek whose irrigation rights are satisfied from subsurface sources and have no call on surface flow Meadowville Creek.

b. When there is not sufficient water to satisfy all rights, the State Engineer shall distribute the water on a pro rata basis to all users from all of the above sources. *on an interest basis from each diversion.*

c. The State Engineer, in the exercise of his proper discretion, may direct that the water user shall use his fractional share of the stream or may direct the user shall take all of the stream for a fractional part of the time; and in order to properly distribute said water, the State Engineer shall exercise his statutory authority to require the installation of measuring devices and headgates that are reasonably necessary to make such distribution of water.

(See 24 March 1958 Interlocutory Order attached hereto as Exhibit "A" and incorporated herein by reference.)

12. That order further stated: "That copies of this order and of said priority schedule shall be transmitted to counsel and to all parties concerned and shall become effective upon its

entry by the Court and shall continue in effect for 1958 and thereafter until and unless same is amended.”

13. Upon information and belief, neither the “Red Book”, nor any other order or Decree amended the 1958 Interlocutory Order.
14. In the summer of 2000, there was insufficient water to meet the needs of those holding the above-described water rights.
15. The Defendants have refused to make available water to be distributed in accordance with the water rights of the Plaintiff on a pro rata basis in compliance with the 1958 Order. Thereby continuing in maximum usage of their own right while Plaintiff received little or no water.
16. The Office of the State Engineer has refused to take any action to enforce the terms of the 1958 Order.
17. The Office of the State Engineer has refused to install, at the expense of the users of said water, measuring devices reasonable and necessary to ensure the appropriate distribution of water.
18. Unless restrained by order of this Court, Defendants will continue to interfere with the Plaintiff’s water rights and deprive the Plaintiff of the quantity of water to which Plaintiff is entitled thereby causing great and irreparable injury to the Plaintiff.
19. Plaintiff has no plain, speedy, or adequate remedy at law for the reason set forth above.

WHEREFORE, Plaintiff requests:

- A. A Declaratory Judgment enforcing the terms of the 1958 Interlocutory Order;

- B. Judgment permanently restraining Defendants from acting in such manner as to decrease the flow of water in Plaintiff's right and to comply with the terms of the 1958 Order;
- C. Judgment from this Court requiring the installation measuring devices to ensure proper distribution.
- D. A preliminary injunction restraining Defendants, Lamborn and Lamborn Ranches, L.L.C. from decreasing the flow of water until final determination can be made of this matter on its merits; and
- E. Costs of suit, and such other and further relief as may be proper.

DATED this 7 day of March 2001.

Hallock & Hallock, a Professional Corporation



TODD N. HALLOCK  
Attorney for Plaintiff

Plaintiff's address:  
P.O. Box 117  
Laketown, Utah 84038

Exhibit "A"

IN THE FIRST JUDICIAL DISTRICT COURT, IN AND FOR RICH COUNTY,  
STATE OF UTAH

-----  
IN THE MATTER OF THE GENERAL )  
DETERMINATION OF ALL THE RIGHTS )  
TO THE USE OF WATER, BOTH SUR- )  
FACE AND UNDERGROUND, WITHIN THE )  
DRAINAGE AREA OF THE BEAR RIVER )  
IN UTAH, RICH COUNTY DIVISION. )  
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INTERLOCUTORY ORDER

70 / 17 1731

The above entitled cause came on regularly for hearing before the Court at Randolph, Utah; the State Engineer appearing by Robert E. Porter, Assistant Attorney General; Joseph R. Weston, John E. Weston and Frank E. Weston appearing by Edward W. Clyde; J. N. Cook, Oris K. Cook and Lew D. Cook appearing by Milton A. Oman; Harold Johnson and Farrell Johnson appearing by Paul Thatcher; Del Clarence Cook appearing by George D. Preston; and Stanley Mattson, the Estate of Ole Mattson, deceased, Elijah C. Willis and Joseph C. Willis were duly notified but failed to appear; and evidence having been presented and received and the matter submitted and the Court, being fully and truly advised in the premises and having heretofore made and entered its Findings of Fact and Conclusions of Law herein, now orders that an interlocutory decree be entered in accordance therewith; wherefore, by virtue of the law and the premises, it is

ORDERED, ADJUDGED AND DECREED that North Creek, Little Cheney Spring Stream, Jebo Creek, Tuft Creek and Judd Kimball Spring Stream be, and they are hereby, declared to be tributary streams to Meadowville Creek, and it is further

ORDERED, ADJUDGED AND DECREED that the priority of all of the above named water users for irrigation from said Meadowville Creek and its tributaries above named be, and they are hereby, declared to be equal and shall be set as of the year 1863, and it is further

ORDERED, ADJUDGED AND DECREED that all of the waters of Meadowville Creek and its tributaries for irrigation purposes shall be

Rebecca P. Rich RICH COUNTY CLERK,  
DO HEREBY CERTIFY THAT THIS IS A  
FULL, TRUE AND CORRECT COPY OF  
THE ORIGINAL

DATE 5-16-00

distributed to the owners and users thereof by and under the direction of the Utah State Engineer for the year 1958 in accordance with the attached priority schedule and due consideration shall be given and proper allowance made for the following factors:

a. When there is sufficient water to satisfy all rights, distribution shall be made as if there were three separate units, namely (1) North Creek and Little Cheney Spring Stream, (2) Jebo Creek, Tuft Creek and Judd Kimball Spring Stream, and Meadowville Creek above and including the Meadowville Ditch Diversion, (3) Meadowville Creek below the Meadowville Ditch diversion, and (4) those lands on Lower Meadowville Creek whose irrigation requirements are satisfied from subsurface sources and have no call on surface flow of Meadowville Creek.

b. When there is not sufficient water to satisfy all rights, the State Engineer shall distribute the water on a pro-rata basis to all users from all of the above sources. *on an interest basis from each diversion.*

c. The State Engineer, in the exercise of his proper discretion, may direct that the water user shall use his fractional share of the stream or may direct that the user shall take all of the stream a fractional part of the time; and, in order to properly distribute said water, the State Engineer shall exercise his statutory authority to require the installation of measuring devices and headgates that are reasonably necessary to make such distribution of water.

d. That the State Engineer shall secure the services of a water commissioner to distribute the water under said priority schedule and shall proceed in accord with state statutes in assessing the water users for such services; and the State Engineer is hereby specifically authorized to withhold water from any user who fails to pay his assessment within the time allotted by the State Engineer. Any measuring devices reasonably required to distribute water under said priority schedule that are of benefit to the entire water system as distinguished from a device that measures water to the individual user shall be installed after collection of the cost thereof by assessment as above set forth either in the year 1958 or in any succeeding year as the State Engineer shall determine.



e. At the conclusion of the 1958 irrigation season, the State Engineer shall formulate a report of his activities and shall present the same, together with his recommendations for succeeding years, to the Court sitting in Randolph, Utah, on Wednesday, November <sup>13</sup>~~4~~, 1958, at 11:00 a.m. or at such other time as the Court may direct.

f. That any party who may claim to be damaged by the distribution as above ordered shall have the right at any time <sup>during the 1958 season</sup> upon 30 days notice to all other parties, to petition the Court for such relief as he may seek.

g. That copies of this order and of said priority schedule shall be transmitted to counsel and to all parties concerned and shall become effective upon its entry by the Court and shall continue in effect ~~until superseded by a further order of this Court.~~

*and the water unit and water same for 1958*  
Dated this 24 day of March, 1958.

W. C. Jones  
DISTRICT JUDGE

*(Not to be taken from Charles Price)  
111 Topography (1958)*

PRIORITY SCHEDULE OF MEADOWVILLE CREEK & TRIBUTARIES  
UNIT NO. 1 - NORTH CREEK & LITTLE CHENEY SPRING STREAM

December 6, 1957  
Page 1.

PRIORITY	FLOW	PERIOD OF USE	WATER USER'S CLAIM NO.	NORTH CREEK CLAIMANT	TOTAL ACRES	REMARKS
1863	2.00 cfs.	April 1 - Sept. 30*	854 1298	J. N. Cook	66.52	
1863	4.00 cfs.	April 1 - June 30	855	J. N. Cook	66.52	
1863	4.00 cfs.	April 1 - June 30	868 869 870 871 1201 1299 1301 1304	Del Clarence Cook		
1863	4.00 cfs.	April 1 - June 30	825 1300	Farrell Johnson	40.38	
1863	2.50 cfs.	July 1 - Sept. 30	856	J. N. Cook, $\frac{1}{2}$ Int.	55.89	
				Del Clarence Cook, $\frac{1}{2}$ Int.	66.52	
			824 861 862 863 1202 1221 1222 1223			

\*The period of use allowed for the irrigation season is April 1 to Sept. 30, both inclusive. Even though the April 1 date precedes by 30 days the normal period when irrigation water can be beneficially used by plants in this area, it is felt no user below Meadowville Creek can be adversely affected by adopting this date. It is also possible that some benefit to lower users may be derived by spreading water over higher lands early, thus alleviating in part an aggravated flooding of lower Meadowville Creek lands and improving mid-summer flow because of greater return flow.

*JP*

LITTLE CHENEY SPRING STREAM

<u>PRIORITY</u>	<u>FLOW</u>	<u>PERIOD OF USE</u>	<u>WATER USER'S CLAIM NO.</u>	<u>CLAIMANT</u>	<u>TOTAL ACRES</u>	<u>REMARKS</u>
1863	0.5 cfs.	April 1 - Sept. 30	743	J. N. Cook, $\frac{1}{2}$ Int.	66.52	
			900	Del Clarence Cook, $\frac{1}{2}$ Int.	16.93	

UNIT NO. 2 - JEBO CREEK, TUFT CREEK, MEADOWVILLE CREEK AND JUDD KIMBALL SPRING

JEBO CREEK

<u>1863</u>	<u>4.0 cfs.</u>	<u>(See Remarks)</u>		<u>Oris K. Cook, 9/48 Int.</u>	
			874		
			1219		
			1224		
			1326		
			867		50.15
			1206		
			1210		
			1212		
			1307		
			1325		
			1229		60.57
			850	Lew D. Cook, 8/48 Int.	28.80
			851		
			1225	J. N. Cook, 16/48 Int.	
					20.18

When the combined flows of Jebo Creek and Tuft Creek at the head of the Tuft Creek ditch is 4.9 cfs, or more at 8 A.M. on May 16, the period of use will be from April 1 to June 1, both incl. If the flow at the above-mentioned point is less than 4.9 cfs. at 8 A.M. on May 16, the period of use will be from April 1 thru May 18, both incl.

JEBBO CREEK (Cont'd)

<u>PRIORITY</u>	<u>FLOW</u>	<u>PERIOD OF USE</u>	<u>WATER USER'S CLAIM NO.</u>	<u>CLAIMANT</u>	<u>TOTAL ACRES</u>	<u>REMARKS</u>
1863	2.45 cfs.	(See Remarks)				
			861	Harold Johnson, 48/672 Int.	54.05	When the combined flows of Jebbo Creek and Tuft Creek at the head of the Tuft Creek ditch is 4.9 cfs. or more at 8 A.M. on May 18, the period of use will be from June 2 to Sept. 30, both incl. If the flow at the above-mentioned point is less than 4.9 cfs. at 8 A.M. on May 18, the period of use will be from May 19 thru Sept. 30, both incl.
			861A	Farrell Johnson, 25/672 Int.	7.88	
			882	Joseph R. Weston)	41.47	
			882A	John E. Weston ) 104/672 Int.	1.78	
			882B	Frank E. Weston )	2.11	
			866	Ole Mattson Est., 16/672 Int.	38.75	
			898	Stanley Mattson, 47/672 Int.	28.05	
			852	J. N. Cook, 144/672 Int.	20.18	
			853		28.80	
			1343			
			1230	Lew D. Cook, 288/672 Int.	50.15	
			873	Oris K. Cook, 108/672 Int.		
			1147			
			1172			
			1190			
			1244	Del Clarence Cook, 54/672 Int.		
			1245			
			1247			
			1248			
			1241			
			1271			

55.42

PRIORITY	FLOW	PERIOD OF USE	WATER USER'S CLAIM NO.	TUFT CREEK CLAIMANT	TOTAL ACRES	REMARKS
1863	4.0 cfs.	(See Remarks)	876 1198	Oris K. Cook, 7/42 Int.	18.94	When the combined flows of Jebu Creek and Tuft Creek at the head of the Tuft Creek ditch is 4.9 cfs. or more at 8 A.M. on May 18, the period of use will be from April 1 to June 1, both incl. If the flow at the above-mentioned point is less than 4.9 cfs. at 8 A.M. on May 18, the period of use will be from April 1 thru May 18, both incl.
			1316	Del Clarence Cook, 7/42 Int.	4.60	
			1273 1199 1200 1197	Lew D. Cook, 6/42 Int.		
			849	J. N. Cook, 22/42 Int.	28.80	
			857	J. N. Cook, 24/71344 Int.	15.53	
1863	2.45 cfs.	(See Remarks)	1272 1213 1216 1142	Lew D. Cook, 41/1344 Int.	28.80	When the combined flows of Jebu Creek and Tuft Creek at the head of the Tuft Creek ditch is 4.9 cfs. or more at 8 A.M. on May 18, the period of use will be from June 2 to Sept. 30, both incl. If the flow at the above-mentioned point is less than 4.9 cfs. at 8 A.M. on May 18, the period of use will be from May 19 thru Sept. 30, both incl.
			875 1211	Oris K. Cook, 72/1344 Int.	18.94	
			1274	Del Clarence Cook, 72/1344 Int.	4.60	
			884	Harold Johnson, 128/1344 Int.	54.05	
			884A	Farrell Johnson, 50/1344 Int.	7.88	
			885 885A 885B	Joseph R. Weston ) John E. Weston ) 432/1344 Int. Frank E. Weston )	41.47 1.78 2.11	
			886	Ole Mattson Est., 32/1344 Int.	38.75	
			897	Stanley Mattson, 126/1344 Int.	28.05	

1863 ----- 2.45 cfs. ----- (See Remarks)

<u>PRIORITY</u>	<u>FLOW</u>	<u>PERIOD OF USE</u>	<u>WATER USER'S CLAIM NO.</u>	<u>TUFT CREEK (Cont'd)</u>	<u>CLAIMANT</u>	<u>TOTAL ACRES</u>	<u>REMARKS</u>
1863	2.5 cfs.	(See Remarks)	818	Ole Mattson Est.	8/336 Int.	38.75	When the combined flows of Jebo Creek and Tuft Creek at the head of the Tuft Creek ditch is 4.9 cfs., or more at 8 A.M. on May 18, the period of use will be from April 1 to June 1, both incl. If the flow at the above-mentioned point is less than 4.9 cfs. at 8 A.M. on May 18, the period of use will be from April 1 thru May 18, both incl.
			819	Harold Johnson,	44/336 Int.	54.05	
			819A	Farrell Johnson,	36/336 Int.	7.88	
			896	Stanley Mattson,	32/336 Int.	28.05	
			679	Joseph R. Weston)		41.47	
			679A	John E. Weston )	216/336 Int.	1.78	
			679B	Frank E. Weston )		2.11	

MEADOWVILLE CREEK

1863	4.3 cfs	April 1 - Sept. 30	823	Joseph R. Weston)		86.40	
			889	John E. Weston )	216/336 Int.	1.78	
			823A	Frank E. Weston )		2.11	
			889A				
			823B				
			889B				
			820	J. N. Cook,	216/672 Int.	31.57	
			895	Stanley Mattson,	63/672 Int.	28.05	
			821	Harold Johnson,	73/336 Int.	54.05	
			821A	Farrell Johnson,	88/672 Int.	7.88	
			822	Ole Mattson, Est.	16/672 Int.	39.77	

JUDD KIMBALL SPRING STREAM

<u>PRIORITY</u>	<u>FLOW</u>	<u>PERIOD OF USE</u>	<u>WATER USER'S CLAIM NO.</u>	<u>CLAIMANT</u>	<u>TOTAL ACRES</u>	<u>REMARKS</u>
1863	0.5 cfs.	(See Remarks)	848 842 1227	J. N. Cook, 114/336 Int.	12.69	When the combined flows of Jebo Creek and Tuft Creek at the head of the Tuft Creek ditch is 4.9 cfs. or more at 8 A.M. on May 18, the period of use will be from April 1 to June 1, both incl. If the flow at the above-mentioned point is less than 4.9 cfs. at 8 A.M. on May 18, the period of use will be from April 1 thru May 18, both incl.
			844 843	Del Clarence Cook, 114/336 Int.	16.93	
1863	0.5 cfs.	(See Remarks)	841 847 1220	J. N. Cook, 72/336 Int.	12.69	(Water User's Claims Nos. 842 & 1227 are part of Judd Kimball Spring Stream right, but are diverted from Meadowville Creek)
			846 845	Del Clarence Cook, 72/336 Int.	16.93	When the combined flows of Jebo Creek and Tuft Creek at the head of the Tuft Creek ditch is 4.9 cfs. or more at 8 A.M. on May 18, the period of use will be from June 2 to Sept. 30, both incl. If the flow at the above-mentioned point is less than 4.9 cfs. at 8 A.M. on May 18, the period of use will be from May 19 thru Sept. 30, both incl.
			894	Stanley Mattson, 32/336 Int.	28.05	
			839	Harold Johnson, 20/336 Int.	54.05	
			839A	Farrell Johnson, 24/336 Int.	7.88	(Water User's Claims Nos. 847, 894, 839, 839A, & 1220 are part of Judd Kimball Spring Stream right, but are diverted from Meadowville Creek)
			840	Ole Mattson, Est. 8/336 Int.	39.77	
1863	0.5 cfs.	April 1 - Sept. 30	838	Joseph R. Weston, 108/336 Int.	86.40	(Water User's Claim No. 838 is part of Judd Kimball Spring Stream right but is diverted from Meadowville Creek)

LITTLE SPRING (Jebbo Creek)

<u>PRIORITY</u>	<u>FLCM</u>	<u>PERIOD OF USE</u>	<u>WATER USER'S CLAIM NO.</u>	<u>CLAIMANT</u>	<u>TOTAL ACRES</u>	<u>REMARKS</u>
1863	0.5 cfs.	April 1 - Sept. 30	864 1204 1205	Del Clarence Cook, $\frac{1}{2}$ Int.	27.87	
			744 1226	J. N. Cook, $\frac{1}{2}$ Int.	4.65	

ANDREW SPRING (JUDD KIMBALL SPRING STREAM)

1863	0.25 cfs.	April 1 - Sept. 30	745	J. N. Cook	15.15	
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UNIT NO. 3 - TEMPLE CREEK AND MEADOWVILLE CREEK

TEMPLE CREEK

1863	2.5 cfs.	April 1 - Sept. 30	817 836 837	Joseph R. Weston, $\frac{1}{3}$ Int. Harold Johnson, $\frac{1}{3}$ Int. Ole Mattson Est., $\frac{1}{3}$ Int.	34.36 54.05 118.50	
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<u>PRIORITY</u>	<u>FROM</u>	<u>PERIOD OF USE</u>	<u>WATER USER'S CLAIM NO.</u>	<u>MEADOWVILLE CREEK</u>	<u>CLAIMANT</u>	<u>TOTAL ACRES</u>	<u>REMARKS</u>
1863	16,186	April 1 - Sept. 30	902 1332		Stanley Mattson, 1/40 Int.	31.27	
			832 1170 1171 680		Joseph R. Weston, 7/40 Int.		
			828 1160 1180 833A 1179 1333 827		Farrell Johnson, 5/40 Int.	14.2.88	
			828A 833 1181		Harold Johnson, 4/40 Int.	81.07	
			835 834 1159 1334 1185 831		Ole Mattson Est., 11/40 Int.	78.83	
			829A 829B		Elijah C. Willis) Joseph C. Willis) 12/40 Int.	210.48 204.77	

UNIT NO. 4 - MEADOWVILLE CREEK

SUB-IRRIGATED WITHOUT SURFACE DIVERSION

<u>PRIORITY</u>	<u>FLOW</u>	<u>PERIOD OF USE</u>	<u>WATER USER'S CLAIM NO.</u>	<u>CLAIMANT</u>	<u>TOTAL ACRES</u>	<u>REMARKS</u>
1863		April 1 to Sept. 30	1186 1189	Claude G. Willis	55.69	
1363		April 1 to Sept. 30	1187 1188	Weston Ranch & Livestock Co.	34.28	